

1 ANTHONY MCKNIGHT

: CORAM

2
3 CLAIMANT

: WORKERS' COMPENSATION
COMMISSIONER
HON. STEPHEN B. DELANEY

4
5 VS.

6
7 STATE OF CONNECTICUT
8 DEPARTMENT OF CORRECTIONS

: STATE OF CONNECTICUT

9 EMPLOYER

: FIRST DISTRICT OFFICE

10
11 GAB ROBINS NORTH AMERICA, INC.

: FILE NO. 300008112

12 INSURER

13
14 RESPONDENTS

: MAY 5, 2010

15
16 A P P E A R A N C E S

17
18
19 Anthony McKnight, P.O. Box 304, West Haven, CT 06516,
20 appeared pro se.

21
22 Donna Summers, Assistant Attorney General, P. O. Box
23 120, Hartford, CT 06141-0120, represented the
24 Respondent-Employer, and GAB Robins North America, Inc.

25
26 WILFRED LEON
CHIEF HEARING REPORTER
FIRST DISTRICT OFFICE

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No witnesses proffered by the parties.

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(WHEREUPON, THE FORMAL HEARING COMMENCED
AT 1:01 p.m.)

THE COMMISSIONER: On the record.
Good afternoon everyone.

For the record, my name is Stephen B.
Delaney, Workers' Compensation Commissioner,
Acting in the First District. Today is May
5th, 2010. We're going to take up the
Formal matter of Anthony McKnight, Sr v.
Department of Corrections, File Number
300008112.

This is a Formal hearing being held
pursuant to notice sent to the parties on
March 23rd, 2010. And the noticed issue is
a claim under 31-290a for a Wrongful
Discharge/Discrimination, which went out in
error, and I think the parties will agree
that, when I have an opportunity to discuss
it with them, what the issue is that I will
be deciding.

Counsel's present for the State of
Connecticut, and Mr. McKnight is
representing himself.

Mr. McKnight, just before we begin, I've
advised you and I'll give you an opportunity
to retain counsel and you have chosen to
represent yourself, correct?

1 MR. MCKNIGHT: That's correct.

2 THE COMMISSIONER: Okay. Do you
3 have any -- you want to identify yourself,
4 Attorney Summers.

5 MS. SUMMERS: Yes. Donna Summers
6 representing the State of Connecticut,
7 Department of Corrections, and Department of
8 Administrative Services.

9 THE COMMISSIONER: Okay.

10 Mr. McKnight, is there some exhibits you
11 would like to offer, sir?

12 MR. MCKNIGHT: Yes, sir.

13 First, I would like to offer Exhibit A,
14 it's a five-page document from Helen Kemp
15 from the Retirement Services Division.

16 THE COMMISSIONER: Is there any
17 objection?

18 MS. SUMMERS: No objection.

19 THE COMMISSIONER: All right,
20 that's a full exhibit.

21 (RECEIVED AND MARKED CLAIMANT'S
22 EXHIBIT A)

23 MR. MCKNIGHT: Claimant's Exhibit
24 B, Case Summary from Michael Cozzolino from
25 the Department of -- or the Comptrollers
26 Office, department of Retirement Services
27 Division.

1 MS. SUMMERS: Commissioner, I don't
2 under -- don't know the relevance of that,
3 but I think it can come in under 31-298,
4 and so, we would allow it -- we would let it
5 come in under that.

6 THE COMMISSIONER: So it's a full
7 exhibit.

8 MR. MCKNIGHT: I don't understand
9 the 31 -- we're doing 5-142 --

10 THE COMMISSIONER: It gives me wide
11 discretion to allow anything I want -- a
12 Commissioner -- in other words, it's coming
13 in as a full exhibit. She could object to
14 its relevancy and ask you to explain your
15 relevancy, but she's just figuring I'm going
16 to let that in, and under 31-298, or
17 whatever it is, I have wide discretion about
18 -- the Act -- the Rules of Evidence in
19 workers' compensation are not so strictly
20 enforced as they are in court; so, there's
21 no objection. It's coming in. That's what
22 she's saying. I think Attorney Summers is
23 probably going to -- anticipated my ruling,
24 I was going to let it in, okay.

25 MR. MCKNIGHT: Okay.

26 THE COMMISSIONER: So that's coming
27 in.

(RECEIVED AND MARKED CLAIMANT'S
EXHIBIT B)

MR. MCKNIGHT: Claimant's Exhibit
C, we have an Employee Separation form.

THE COMMISSIONER: Any objection?

MS. SUMMERS: The only concern I
would have, Commissioner, is that I would
ask that if that's going to come in, that
all of the exhibits that were introduced in
the prior Formal hearing before Commissioner
Miles that you take administrative notice of
the existing file in this matter that
includes all of the exhibits that were put
into that Formal hearing, as well as the
prior rulings and things like that that are
in the -- exist in the file so that you have
-- so that your consideration is complete.

THE COMMISSIONER: Well, I presume
that you were going to ask me to take
administrative notice of Commissioner
Miles's Finding and Dismissal of May 21,
2008 and the Appellate Court of March 23,
1999 of that case?

MS. SUMMERS: We would. And also
in that record, Commissioner, that was
considered by Commissioner Miles -- and I
don't recall the number -- is the Claimant's

1 handwritten resignation from 1990 -- May of
2 1995. We would just ask if you'd take
3 administrative notice of the entire record
4 then you'll be able to take administrative
5 notice of that exhibit as well.

6 THE COMMISSIONER: Do you have an
7 objection, Mr. McKnight?

8 MR. MCKNIGHT: I object. I never
9 resigned, nor did I admit to resigning, and
10 nor the Commissioner said that I resigned.
11 He said I offered a letter of resignation,
12 and the effective date on that letter was to
13 be determined by the Claimant.

14 THE COMMISSIONER: Okay, I don't
15 know what --

16 MR. MCKNIGHT: I mean, if she wants
17 to enter it into evidence, fine.

18 THE COMMISSIONER: Okay.

19 MR. MCKNIGHT: If she just wants to
20 put it in, fine.

21 THE COMMISSIONER: I'll put them
22 all in, and what we can do, Mr. McKnight,
23 because I'm sure you probably don't have
24 copies of it, I'll take administrative
25 notice of all the prior exhibits in this
26 case, okay.

27 MR. MCKNIGHT: Okay.

1 THE COMMISSIONER: So Claimant's C
2 is a full exhibit.

3 (RECEIVED AND MARKED CLAIMANT'S
4 EXHIBIT C)

5 MR. MCKNIGHT: I have Claimant's
6 Exhibit D, Attorney General Blumenthal June
7 8th, 1990 letter to Comptroller Caldwell.

8 THE COMMISSIONER: Okay. Any
9 objection, Attorney Summers?

10 MS. SUMMERS: No, Commissioner.

11 THE COMMISSIONER: All right, full
12 exhibit.

13 (RECEIVED AND MARKED CLAIMANT'S
14 EXHIBIT D)

15 MR. MCKNIGHT: Claimant's Exhibit
16 E, I have a letter from Attorney Blumenthal
17 -- Attorney General Blumenthal to the
18 Honorable Jesse M. Frankl, Workers'
19 Compensation Commission.

20 THE COMMISSIONER: Any objection?

21 MS. SUMMERS: No objection.

22 THE COMMISSIONER: Okay, full
23 exhibit.

24 (RECEIVED AND MARKED CLAIMANT'S
25 EXHIBIT E)

26 MR. MCKNIGHT: I have Claimant's
27 Exhibit F, which is a letter from the New

1 England Independent Medical Examination
2 referred to -- referred by Commissioner
3 Miles in the decision. This is Doctor
4 Goodman.

5 THE COMMISSIONER: Is that one of
6 the exhibits, Mr. McKnight, in the original?

7 MR. MCKNIGHT: Right.

8 MS. SUMMERS: It is -- it is Doctor
9 Goodman's report. I believe it was entered
10 into evidence as Respondent's Exhibit 4, it
11 was the state's IME, and it is appended to
12 the Form 36 that was approved in May 1994.

13 MR. MCKNIGHT: I'm not entering it
14 for that effect, so --

15 THE COMMISSIONER: All right. But
16 do you have an objection to that coming in?

17 MS. SUMMERS: No.

18 THE COMMISSIONER: It's a full
19 exhibit.

20 (RECEIVED AND MARKED CLAIMANT'S
21 EXHIBIT F)

22 MR. MCKNIGHT: I have here G, a
23 Finding and Dismissal of Commissioner Miles.

24 THE COMMISSIONER: Okay.

25 MS. SUMMERS: No objection.

26 THE COMMISSIONER: Okay, full
27 exhibit.

(RECEIVED AND MARKED CLAIMANT'S
EXHIBIT G)

MR. MCKNIGHT: I have Claimant's
Exhibit H, that's the Formal hearing
transcript of the then Personnel Officer,
Linda Fowler.

MS. SUMMERS: Commissioner, there's
two pages of transcript that are being
offered as Claimant's Exhibit H on pages 3
and 9. I believe the entire transcript
should be a part of your file of which
you've taken administrative notice of. So
given that, we don't have any objection to
those few pages.

THE COMMISSIONER: It's a full
exhibit.

(RECEIVED AND MARKED CLAIMANT'S
EXHIBIT H)

MR. MCKNIGHT: I have Claimant's
Exhibit I, which is the Report of
Occupational Injury or Disease To an
Employee dated 4/26/93.

THE COMMISSIONER: Is that a First
Report of Injury, Mr. McKnight?

MR. MCKNIGHT: Yes.

THE COMMISSIONER: All right, thank
you.

1 MR. MCKNIGHT: It's the very first
2 Report of Injury that happened approximately
3 maybe 15 minutes after the incident.

4 THE COMMISSIONER: Okay.

5 MS. SUMMERS: No objection,
6 Commissioner.

7 THE COMMISSIONER: Full exhibit.

8 (RECEIVED AND MARKED CLAIMANT'S
9 EXHIBIT I)

10 MR. MCKNIGHT: Claimant's Exhibit
11 J, the medical incident report from the
12 Connecticut Department of Corrections dated
13 4/26/93. That's two pages.

14 THE COMMISSIONER: Any objection?

15 MS. SUMMERS: No.

16 THE COMMISSIONER: Full exhibit.

17 (RECEIVED AND MARKED CLAIMANT'S
18 EXHIBIT J)

19 MR. MCKNIGHT: I have Claimant's
20 Exhibit K, which is from Department of
21 Corrections, which is notification of
22 process in the workers' compensation claim.

23 MS. SUMMERS: No objection.

24 THE COMMISSIONER: Full exhibit.

25 (RECEIVED AND MARKED CLAIMANT'S
26 EXHIBIT K)

27 MR. MCKNIGHT: I have Claimant's L,

1 which is the affirmation of the State
2 Appellate Court.

3 MS. SUMMERS: No objection.

4 THE COMMISSIONER: Full exhibit.

5 (RECEIVED AND MARKED CLAIMANT'S
6 EXHIBIT L)

7 MR. MCKNIGHT: I have Claimant's
8 Exhibit M, Compensation Review Board, and I
9 have the Hudson v. Connecticut Department of
10 Correction, Compensation Review Board
11 claim -- case.

12 SUMMERS: No objection.

13 THE COMMISSIONER: Okay, full
14 exhibit.

15 (RECEIVED AND MARKED CLAIMANT'S
16 EXHIBIT M)

17 MR. MCKNIGHT: I have Claimant's
18 Exhibit N, which is Doctor -- the primary
19 treating physician, Doctor Michael Luchini's
20 medical report.

21 THE COMMISSIONER: Any objection?

22 MS. SUMMERS: No.

23 THE COMMISSIONER: Full exhibit.

24 (RECEIVED AND MARKED CLAIMANT'S
25 exhibit N)

26 MR. MCKNIGHT: And I would, just
27 for the record, O, this is -- I'll read you

1 this with my brief, the Memorandum of Law,
2 5-142 and the statute 5-169(i), which is the
3 retirement disability compensation.

4 MS. SUMMERS: No objection.

5 THE COMMISSIONER: Okay.

6 (RECEIVED AND MARKED CLAIMANT'S
7 EXHIBIT O)

8 MR. MCKNIGHT: And I also have
9 Claimant's P, DeLarosa v. State of
10 Connecticut.

11 MS. SUMMERS: No objection.

12 THE COMMISSIONER: All right,
13 that's a full exhibit.

14 (RECEIVED AND MARKED CLAIMANT'S
15 EXHIBIT P)

16 THE COMMISSIONER: So A through P
17 are full exhibits.

18 Attorney Summers, did you have exhibits
19 you would like to offer?

20 MS. SUMMERS: Yes, Commissioner. I
21 just have two.

22 One is the decision that was issued by the
23 Superior Court for New Haven in the matter
24 of Anthony McKnight v. John Armstrong. The
25 decision date is July 3 of 2001 of which you
26 could take administrative notice anyway, but
27 we've marked it as Exhibit 1.

1 THE COMMISSIONER: Do you have any
2 objection, Mr. McKnight?

3 MR. MCKNIGHT: I would -- I mean,
4 as far as relevance.

5 THE COMMISSIONER: I don't know
6 what the relevance is either, but --

7 MR. MCKNIGHT: What is the
8 relevance of that?

9 MS. SUMMERS: The -- Commissioner,
10 Mr. McKnight sought a writ of -- after the
11 Appellate Court decision in this matter. He
12 sought a writ of mandamus, quote,
13 "commanding the Respondent to pay him five
14 years of salary pursuant to Section 5-142a,
15 as well as money damages, and that
16 determination -- that request for benefits
17 under 5-142a. And he also referenced it's
18 intersection with his -- with disability
19 retirement and hazardous duty retirement
20 which, as I understand it, is the essence of
21 the issues here.

22 This -- the Appellate -- Superior Court
23 dismissed that claim against the
24 Commissioner (sic), and it's a final
25 decision.

26 THE COMMISSIONER: Against the
27 Claimant, not me.

1 MS. SUMMERS: Yes, dismissed it --
2 I'm sorry, yes. Dismissed -- the claim was
3 made against the Commissioner, and the
4 Superior Court dismissed the claim, and it
5 is a final decision.

6 THE COMMISSIONER: And it was not
7 appealed?

8 MS. SUMMERS: It was not appealed.

9 THE COMMISSIONER: Mr. McKnight,
10 your turn.

11 MR. MCKNIGHT: Okay, the claim
12 wasn't appealed. As the Court referenced --
13 the Court referenced award of 31-290a, which
14 was denied, and subsequently I'm back here
15 --

16 THE COMMISSIONER: Right.

17 MR. MCKNIGHT: -- because I didn't
18 exhaust my administrative remedies. So
19 that's why we're here. I don't know how
20 this in particular has anything to do with
21 5-142, because 5-142 is an exclusive remedy.

22 THE COMMISSIONER: I thought that
23 Attorney Summers said that was a claim for
24 writ of mandamus compelling the Commissioner
25 of Corrections to make a payment under that
26 section of the statute for five years.

27 Is that not -- I don't have it in front of

1 me. So, is that what that says?

2 MS. SUMMERS: Yes, that was what
3 the claim was.

4 MR. MCKNIGHT: No.

5 THE COMMISSIONER: Well, let me
6 take a look at it, because I can read it and
7 maybe we can --

8 MS. SUMMERS: (Handing)

9 THE COMMISSIONER: (Receiving and
10 reading).

11 MR. MCKNIGHT: As you can see on
12 the last page -- I mean, the last paragraph
13 -- so -- I mean I'm here. So, I don't know.

14 THE COMMISSIONER: Well, then, Mr.
15 McKnight, how does this hurt you?

16 MR. MCKNIGHT: I mean, I just don't
17 want to waste too much time on 31-290a
18 issues. I'm just here for --

19 THE COMMISSIONER: I don't want to
20 waste any time on it either, because we've
21 discussed in previous hearings that the law
22 of your case is -- isn't what it is under
23 31-290a. But for whatever this is worth --

24 MR. MCKNIGHT: I mean -- Okay.

25 THE COMMISSIONER: -- and I
26 appreciate your argument, that you have to
27 exhaust your -- that's what Judge Nevins

1 (phonetic spelling) wrote.

2 MR. MCKNIGHT: Yes.

3 THE COMMISSIONER: I'll allow it
4 for whatever it's worth. I really don't
5 know what it's worth, but -- so it's a
6 Motion To Dismiss, was granted, and
7 basically you hadn't excused your
8 administrative -- okay, so that's a full
9 exhibit.

10 (RECEIVED AND MARKED RESPONDENT'S
11 EXHIBIT 1)

12 MS. SUMMERS: The second and last
13 exhibit for the State at this time,
14 Commissioner, would be a June 7th, 2000
15 letter that was sent to Mr. McKnight by
16 Elizabeth Hendrickson who is from the
17 Retirement and Benefits Services Division.

18 THE COMMISSIONER: June 7th of?

19 MS. SUMMERS: Of 2000.

20 THE COMMISSIONER: Okay.

21 MS. SUMMERS: And it discusses the
22 same kinds of issues that are addressed in
23 Claimant's Exhibit A.

24 THE COMMISSIONER: Has Mr. McKnight
25 seen that?

26 MS. SUMMERS: Yes, I gave him a
27 copy.

1 MR. MCKNIGHT: I have one. I have
2 one.

3 THE COMMISSIONER: Okay. Do you
4 have an objection, Mr. McKnight?

5 MR. MCKNIGHT: Oh, no-no. No.

6 THE COMMISSIONER: Okay, full
7 exhibit.

8 MS. SUMMERS: Thank you.

9 (RECEIVED AND MARKED RESPONDENT'S
10 EXHIBIT 2)

11 THE COMMISSIONER: You know, before
12 -- and forgive me, please, it's my fault.
13 We should read and define what the issue is
14 going to be.

15 I'm looking at our notes of -- my notes,
16 Mr. McKnight, from March 10th, 2010, and I
17 think we agreed that, in fact, we were not
18 going to be retrying the 31-290a claim.

19 MR. MCKNIGHT: Right.

20 THE COMMISSIONER: But your claim
21 was that you're entitled to benefits under
22 Connecticut General Statutes 5-142(a) from
23 your date of injury, meaning 4/26/93, to the
24 present; is that correct?

25 MR. MCKNIGHT: From the day I left
26 work injured, yeah.

27 THE COMMISSIONER: That's 4/26.

1 MR. MCKNIGHT: No, that's September
2 19th, 1993. I actually left work injured
3 due to the injury.

4 THE COMMISSIONER: I thought I had
5 -- well, I thought that I read that you had
6 two dates of injury: You had one in 89, and
7 the other was 93. I had June 26th, 93. Is
8 that not right?

9 MR. MCKNIGHT: That's the date of
10 injury. But I was being treated, and I was
11 allowed to go to work and do some 3rd shift
12 assignment.

13 THE COMMISSIONER: Okay. So what
14 is your --

15 MR. MCKNIGHT: The last date of my
16 work was September the 19th of 1993 --

17 THE COMMISSIONER: Okay.

18 MR. MCKNIGHT: -- that I was --
19 the last day I went to the building.

20 THE COMMISSIONER: Okay. So you're
21 looking from September 19th, 1993 through
22 the present?

23 MR. MCKNIGHT: Through the present.

24 THE COMMISSIONER: All right. And
25 did you want to say anything, Mr. McKnight,
26 or did you want to --

27 THE REPORTER: Did you want to

1 state that's the issue for the Formal,
2 Commissioner?

3 THE COMMISSIONER: Yes, I'm sorry.
4 We agree that that's what the issue is?

5 MR. MCKNIGHT: The basic issue is
6 my 5-142 benefits as it relates to salary,
7 and health, medical expenses, et cetera, et
8 cetera --

9 THE COMMISSIONER: Right.

10 MR. MCKNIGHT: -- and my credit of
11 service, which, of course, goes along with
12 the --

13 THE COMMISSIONER: Yeah, you and I
14 talked about that before. I don't think I
15 can order them to do that.

16 MR. MCKNIGHT: No, you can't give
17 me the credit. You can't order them to give
18 me the credit for the service, but you can
19 give me my back wages, et cetera, et cetera,
20 and that will, in turn, allow them to credit
21 me for my services. The service dates for
22 the wages, in fact, give me my credits.

23 THE COMMISSIONER: Presuming you
24 prevail, that's correct.

25 MR. MCKNIGHT: Uh-hum.

26 THE COMMISSIONER: You'd have to go
27 to some other agency, or whomever, to say,

1 hey, give me credit for whatever that is.

2 MR. MCKNIGHT: No, all I need --
3 basically, the Retirement Division said all
4 I need is this, the decision of Commissioner
5 Miles clarifying, where he says that I
6 received the injuries -- I have a work
7 compensable injury, but no one had -- no one
8 in the Commissioner gave me the benefits.

9 See, the Retirement Division can't give me
10 my benefits -- or they won't give me my
11 benefits. I don't know, but I'm just --

12 THE COMMISSIONER: Okay. Well --

13 MR. MCKNIGHT: We're just here to
14 clarify that so that you can give me an
15 order of award so that they can give me my
16 benefits, maybe, I don't know.

17 THE COMMISSIONER: Is there
18 anything else that you wanted to say, Mr.
19 McKnight?

20 MR. MCKNIGHT: Sure.

21 THE COMMISSIONER: Go ahead.

22 MR. MCKNIGHT: I mean, I would like
23 to go over the actual exhibits if you don't
24 mind and just point out the particulars that
25 are beneficial to my claim.

26 Here we have in Exhibit A, I would like
27 the Commissioner to take judicial note that

1 Ms. Helen Kemp has actually, contrary to
2 what was, you know, presented by the state,
3 I was actually terminated on May 26th, 1994,
4 as opposed to May 24th of 1995. That --
5 what do you call it? The so-called
6 resignation letter references, that date on
7 the paper? If you understand what I'm
8 saying on page 2 of the letter?

9 THE COMMISSIONER: I don't have --

10 MR. MCKNIGHT: If I could read it
11 into -- it says, "our records indicate that
12 your last day of active employment with the
13 State of Connecticut was May 26th, 1994."
14 This is Exhibit A. So that clearly states
15 that. And I would like you, for the record,
16 to just make the reference to the
17 resignation letter moot, as I couldn't --
18 there's no way I could have resigned being
19 that I was terminated and not knowing that I
20 was terminated to resign, if you understand
21 what I'm saying. I'm just putting it on
22 the record.

23 THE COMMISSIONER: I do, Mr.
24 McKnight. And, you know, I'm going to let
25 you do exactly what you need to do, but put
26 it in your brief as well, okay.

27 MR. MCKNIGHT: I will put it in my

1 brief.

2 THE COMMISSIONER: Normally, that's
3 how it's handled. Those are all evidence,
4 those are all full exhibits, I have to look
5 them over, I have to rely on what's put in
6 there and what your arguments are. But if
7 you just want to point some things out in
8 each of the exhibits, sure.

9 MR. MCKNIGHT: I just want to point
10 a couple of things out.

11 THE COMMISSIONER: Sure.

12 MR. MCKNIGHT: And I would like the
13 Commissioner to take note that Michael
14 Cozzolino, he is a retired hazardous duty
15 employee with the State of Connecticut that
16 received compensable body injuries under
17 5-142, and he since -- he received his --
18 when you asked me earlier about the credit
19 for service, he received his credit for
20 services.

21 So what I'm asking is for the Commission,
22 along with the Attorney General's Office, to
23 review Mr. Michael Cozzolino's file and
24 determine what it was that affected him
25 receiving his credit of service as opposed
26 to mine not receiving my credit of service.

27 Do you understand what I'm saying?

1 THE COMMISSIONER: Yes, I think I
2 do, Mr. McKnight, but --

3 MR. MCKNIGHT: I mean, you asked me
4 the question earlier, and what I'm saying is
5 Mr. Cozzolino was before this Commission,
6 and he received his benefits.

7 Now, I'm asking the Commission that
8 whatever the Commission and Attorney
9 General's Office did to affect his benefits
10 I would like the Commission and Attorney
11 General's Office to do to affect my
12 benefits, because I am injured under the
13 Connecticut 5-142(a) statute.

14 THE COMMISSIONER: You have two
15 open files, Mr. McKnight -- we knee agree on
16 that?

17 MR. MCKNIGHT: Right.

18 THE COMMISSIONER: -- for two dates
19 of injuries, but I'm a little confused. And
20 I'm not trying to be argumentative or
21 difficult, all right, you want me to take a
22 look at Cozzolino's file --

23 MR. MCKNIGHT: Well --

24 THE REPORTER: You have to let him
25 finish. One at a time.

26 THE COMMISSIONER: I know
27 Cozzolino, Mr. McKnight, because I heard his

1 case. In fact, I dismissed part of his
2 case --

3 MR. MCKNIGHT: Right.

4 THE COMMISSIONER: -- as I recall,
5 so I'm intimate with the details of that
6 case.

7 Why -- how is that applicable to your
8 case? I mean, each case is different. You
9 know that.

10 MR. MCKNIGHT: It's not applicable
11 to the point of where his case is any way
12 having to do with my case --

13 THE COMMISSIONER: Right.

14 MR. MCKNIGHT: -- but what I'm
15 saying is that if you have -- and this is
16 just a standard administrative procedure --
17 if you have an A and a B affected by the
18 same condition, you should have the same
19 outcome.

20 So what I'm saying is if Mr. Cozzolino
21 was a Corrections Officer like I was a
22 Corrections Officer, Mr. Cozzolino got
23 injured like I got injured, Mr. Cozzolino
24 received the benefits, and I didn't.

25 So I think it's incumbent upon this
26 administration to go and see what it was
27 that caused him to affect his benefits and I

1 don't have mine, and I have the same
2 decision as Mr. Cozzolino where it was
3 determined that he has a work compensable
4 injury.

5 THE COMMISSIONER: I'm not aware of
6 any concept in the law that would deal with
7 -- you can pick 10 files and say, hey,
8 Commissioner Delaney, you should look at
9 these files because this is what happened
10 here, what happened there. This is your
11 day. Cozzolino is a whole different case,
12 Mr. McKnight.

13 MR. MCKNIGHT: And this is what I'm
14 entering in, the decision of Commissioner
15 Miles. And if I could, just for the record?

16 THE COMMISSIONER: Sure. Sure.
17 It's your day. Go ahead.

18 MR. MCKNIGHT: Okay. I'll enter it
19 in as a record. As a matter of record,
20 "based upon the foregoing, it is hereby
21 found and concluded the claimant suffered
22 compensable bodily injuries on September 4
23 of 1989, and April 26th, 1993, which claims
24 remain open under Chapter 568 and under
25 which the Claimant may seek to recover
26 further benefits, such as..., " et cetera, et
27 cetera, et cetera.

1 THE COMMISSIONER: Right.

2 MR. MCKNIGHT: But the only
3 significant thing is that on April 26th,
4 1993, the claimant suffered compensable
5 bodily injuries. The statute -- Connecticut
6 General Statutes 5-142(a), which is what
7 we're -- which is the reason we're here for,
8 says that if any Corrections Officer
9 received any injury -- and Commissioner
10 Miles stated that I received the injury -- I
11 shall be compensated five years full salary,
12 thereafter to be reduced to 50 percent of my
13 salary --

14 THE COMMISSIONER: Well, Mr.
15 McKnight --

16 MR. MCKNIGHT: -- for the time of
17 the injury.

18 THE COMMISSIONER: -- that statute
19 says if you are totally disabled for a
20 period of five years. I don't know what the
21 medicals are. Maybe the medicals
22 substantiate that claim, then you are
23 entitled to your full benefit for five
24 years, then it's reduced to 50 percent. We
25 both read the statute. That's totally
26 disabled, not partially disabled, all right.

27 MR. MCKNIGHT: Okay.

1 THE COMMISSIONER: So, for -- and I
2 -- and you're correct, you do -- and I
3 agree with your interpretation -- or reading
4 of Commissioner Miles' decision. You do
5 have two open files which you are entitled
6 to make claims under Chapter 568 for medical
7 and indemnity benefits, but you're going
8 under 5-142, which is --

9 MR. MCKNIGHT: Okay. Well -- and
10 that's OK that I'm agreeing with you, but if
11 you allow me to --

12 THE COMMISSIONER: Sure.

13 MR. MCKNIGHT: -- it also states
14 that under Connecticut General Statute,
15 which is to be interpreted along with 5-142,
16 it says that the claimant shall continue to
17 receive credited service.

18 THE COMMISSIONER: While you're an
19 employee. I think this is -- well, I don't
20 know what it's going to boil down, but
21 that's correct. Assuming you are
22 temporarily partially disabled or totally
23 disabled and then -- you're temporarily
24 partially disabled and they couldn't
25 accommodate you, absolutely, your time is
26 still going to accrue. I think we agree on
27 that interpretation of the statute.

1 MR. MCKNIGHT: Okay.

2 THE COMMISSIONER: I'm not sure
3 you and I agree on what the statute says in
4 terms of TT before it reduces to 50 percent
5 after five years. I think you and I
6 disagree on that part, but I'll be happy to
7 read your brief.

8 MR. MCKNIGHT: Okay. And I'll go
9 over it again in my brief.

10 THE COMMISSIONER: Sure.

11 MR. MCKNIGHT: But it says here in
12 the Blumenthal letter, Exhibit E, it says
13 that "new workers' compensation legislation
14 affecting rights and obligations as between
15 the parties and not specifying otherwise
16 apply only to those persons who receive
17 injuries after the legislation became
18 effective." So, therefore, the total
19 disability and what you're referring to it
20 relates those legislative acts that were
21 taken after the 2005.

22 1993 -- the 1993 proposal and the change
23 of the laws does not affect the injuries
24 before 1993 of April, because the
25 legislation came in effect in July. My
26 injury in fact happened in April.

27 THE COMMISSIONER: So what you're

1 suggesting that this section of the statute
2 is not applicable in terms of --

3 MR. MCKNIGHT: No. What I'm is as
4 far as the time and the statute my injury
5 occurred in April. The change in the
6 statute which you referenced happened in
7 July.

8 THE COMMISSIONER: Got you.

9 MR. MCKNIGHT: So my injury
10 actually is under the legislation prior to
11 the change in the Workers' Comp (sic).

12 THE COMMISSIONER: The old Act,
13 that's correct. The date of injury rule
14 applies, that's correct.

15 MR. MCKNIGHT: Right. And I would
16 ask the Commissioner also to reference my
17 personnel record which --

18 THE COMMISSIONER: Hold on one
19 second. Now, what -- and I'm not trying
20 to be argumentative, I want to be clear,
21 because I'll take a look -- I don't have --
22 I have not -- I don't have the old statute.
23 What does the old statute say that's
24 different -- I'm talking about 5-142(a).

25 MR. MCKNIGHT: Oh, it says that.

26 THE COMMISSIONER: What does it say
27 that's different than the new statute, Mr.

1 McKnight?

2 MR. MCKNIGHT: Oh, what you're
3 referring to with totally disability and,
4 like, it makes reference to such person. I
5 argued that at the Appellate Court in the
6 brief and my argument in front of the
7 Appellate Court, where the reference is made
8 to any person. The change in the statute in
9 2000 and 2005, et cetera, states that such
10 person.

11 So when you state to such person, it
12 relates to the totally incapacitated person,
13 not the injured person. That's the change
14 in the statute. That statute was changed to
15 reflect the total disability people in 2005.
16 That's after my injury.

17 THE COMMISSIONER: I'm not trying
18 to be argumentative with you. I'm missing
19 it, so go slow with me, okay.

20 What's different in 142 from the -- and we
21 both agree you're under the old statute --

22 MR. MCKNIGHT: Right.

23 THE COMMISSIONER: -- the statute
24 that was amended in 93.

25 MR. MCKNIGHT: Right.

26 THE COMMISSIONER: What's different
27 in that statute that affects your claim

1 subsequent? Let's try it that way.

2 MR. MCKNIGHT: Like right now?

3 THE COMMISSIONER: Yes.

4 MR. MCKNIGHT: Okay, what I'm
5 saying is if an individual was to get
6 injured after the statute came in effect --

7 THE COMMISSIONER: In 93.

8 MR. MCKNIGHT: -- in 93, after
9 that --

10 THE COMMISSIONER: Right.

11 MR. MCKNIGHT: -- they would not
12 receive the same benefits as I would
13 receive. Like say, if were injured after
14 July 1993, you wouldn't receive the same
15 benefits I receive.

16 THE COMMISSIONER: What benefits
17 would they be? You mean, in terms of money
18 or --

19 MR. MCKNIGHT: It's not a benefit.
20 What happens is the law that changed
21 actually puts that election into the state's
22 and not the employee's hands, the option to
23 -- like, say, now since 2005 the Department
24 of Corrections could actually terminate you
25 when you become injured. Before, they
26 couldn't terminate you. Now they can. In
27 2005, they can actually terminate you for

1 being injured.

2 THE COMMISSIONER: While you're
3 collecting benefits or --

4 MR. MCKNIGHT: I mean, if you're
5 hurt and you come to work and you say my
6 doctor said I can't do the job no more, you
7 can't continue to receive 5-142(a) benefits
8 because now --

9 THE COMMISSIONER: That's correct.

10 MR. MCKNIGHT: But 1993 you could.

11 THE COMMISSIONER: Okay. Well, I
12 haven't looked at the statute, so maybe --
13 all right, thank you. I wasn't getting what
14 you're saying.

15 MR. MCKNIGHT: Right. That's what
16 the legislation mean why -- when I went and
17 researched it, and that's what they meant in
18 archives when they said are these generous
19 benefits? Like, when do they stop? And the
20 reason they want us to put an end to the
21 5-142 benefits because they don't stop.

22 THE COMMISSIONER: That's fair
23 enough. And I know you've done some
24 research. You know, it would be helpful,
25 Mr. McKnight, if you could, because it would
26 save you some time, if you picked up the
27 legislative history when you -- and I know

1 you know what that is -- attach it to your
2 brief, will you. Otherwise, I'm going to
3 take a look at it. I mean, if it's not
4 clear to me, I'm going to take a look at
5 the legislative history as well, okay.

6 MR. MCKNIGHT: Okay, I will. And I
7 included that part right there, what I just
8 explained to you, in one of my briefs that I
9 submitted. So it's in there.

10 THE COMMISSIONER: Okay.

11 MR. MCKNIGHT: I'll resubmit it and
12 put it together.

13 THE COMMISSIONER: That would be
14 great. If you would just put it all in one
15 packet for me or if you want to see what's
16 in here, just put it together so I know
17 exactly what you want me to look at, in
18 addition to the exhibits.

19 MR. MCKNIGHT: I will.

20 Okay, we have Claimant's Exhibit C. Did
21 we already --

22 THE COMMISSIONER: We left it at B
23 because I didn't understand what I was doing
24 about -- your employee separation form, was
25 it?

26 MR. MCKNIGHT: Okay, let's go with
27 Claimant Exhibit F. That's the Doctor's

1 report.

2 THE COMMISSIONER: Yes.

3 MR. MCKNIGHT: And that will show
4 that, on page 3, the Doctor actually
5 permanently disqualified me from the job of
6 a Corrections Office.

7 THE COMMISSIONER: He said you
8 could no longer be a Corrections Officer?

9 MR. MCKNIGHT: That's correct.

10 THE COMMISSIONER: Okay.

11 MR. MCKNIGHT: And Claimant's
12 Exhibit E, we actually have the
13 cost-of-living where I should have received
14 my cost-of-living, of course, with my
15 paycheck.

16 THE COMMISSIONER: All right.

17 MR. MCKNIGHT: On Claimant's
18 Exhibit M, as far as Hudson and the
19 DeLarosa, I'll include that in my brief.

20 THE COMMISSIONER: That's fair
21 enough.

22 MR. MCKNIGHT: I don't want to
23 waste too much time on that.

24 THE COMMISSIONER: Okay.

25 MR. MCKNIGHT: Claimant's Exhibit
26 H, we'll go to page 9 where I question state
27 -- then State Personnel Officer Linda Fowler:

1 where she actually said I did not retire
2 from state. So I should subsequently been a
3 state employee as opposed to the letter that
4 I referenced earlier where it says I'm not a
5 state employee.

6 THE COMMISSIONER: Okay.

7 MR. MCKNIGHT: Okay, we -- I think
8 I did Claimant's D.

9 THE COMMISSIONER: Yes, you did.

10 MR. MCKNIGHT: Was that Blumenthal
11 letter?

12 THE COMMISSIONER: Yes.

13 MR. MCKNIGHT: Okay, as we
14 reference that, I would just like to make
15 the -- note that this is the document where
16 I'm supposed to continue to receive my
17 health care benefits, which were stopped.
18 So -- and leave of payments for time lost
19 due to employment-related injuries, which is
20 the page -- 3rd page, and it continues from
21 chapter 565 as it relates to section 5-142
22 and provided in pertinent part.

23 That's pretty much the gist of it.

24 THE COMMISSIONER: Okay.

25 MR. MCKNIGHT: I will submit my
26 brief.

27 THE COMMISSIONER: Thank you.

1 MR. MCKNIGHT: And have it to you
2 as soon as possible.

3 THE COMMISSIONER: Well, I want to
4 hear from Attorney Summers, and then -- if
5 she wants to say something, fine.
6 Otherwise, I'll be happy to read her brief.

7 Ms. Summers?

8 MS. SUMMERS: Commissioner, the
9 only thing I would indicate is that should
10 you, on review of the records, determine
11 that the Claimant is entitled to additional
12 relief, what you can order is 5-142(a)
13 benefits, but this is not an -- we have, I
14 believe, cleared things up, that this is
15 not, again, a 31-290a claim.

16 THE COMMISSIONER: That's correct.

17 MS. SUMMERS: So you would not be
18 able to award him back wages, which is what
19 you could do under -- someone could do under
20 290a.

21 What you could award him, though, is the
22 benefits he's entitled to under 5-142(a),
23 which under that statute as we all know, are
24 -- is all of his wages, and earnings, and
25 things of that nature that come along with
26 that benefit pursuant to our case law.

27 THE COMMISSIONER: Okay. Then if

1 you don't have anything further, Mr.
2 McKnight?

3 MR. MCKNIGHT: No, sir.

4 THE COMMISSIONER: You're all set?

5 MR. MCKNIGHT: I'm all set.

6 THE COMMISSIONER: Now, Attorney
7 Summers, do you need a copy of the
8 transcript or you need some time to prepare
9 a proposed findings and a brief?

10 MS. SUMMERS: I would like to
11 prepare a brief -- or proposed findings,
12 anyway. I'm --

13 THE COMMISSIONER: I'll give you an
14 opportunity to file a reply if you'd like,
15 okay, because I know what you're going to
16 say. Because maybe Mr. McKnight is going to
17 raise something, and if you want to say this
18 isn't germane or is germane or you want to
19 address an issue, that's fine, okay.

20 MS. SUMMERS: So you'll schedule a
21 brief for Mr. McKnight and then I'll have an
22 opportunity to do a reply brief at some
23 point?

24 THE COMMISSIONER: We'll do
25 simultaneous briefs and then I'll give you
26 a reply if you want to do a reply, okay.

27 MS. SUMMERS: That's fine.

1 THE COMMISSIONER: I'm not trying
2 to give you extra work, but maybe we can
3 just do it in one shot.

4 What would be a reasonable time? I know
5 you have a family, I know you have
6 vacations. What do you need? Do you need
7 30 days? Forty-five (45) days?

8 MS. SUMMERS: Right. Well, I
9 think --

10 THE COMMISSIONER: He's ready to do
11 his tomorrow (laughing).

12 MS. SUMMERS: I'm just saying
13 whenever he submits his -- I don't know, 30
14 days after he submits his? Is that
15 reasonable? Unless I need an extension,
16 which I don't expect.

17 THE COMMISSIONER: Okay, fine.
18 Then you can ask for --

19 MS. SUMMERS: Is that acceptable?

20 MR. MCKNIGHT: I'll be ready as
21 soon as I get home. As soon as I get back
22 to Philly, I'll have you something.

23 THE COMMISSIONER: Mr. McKnight, if
24 you want, maybe Mr. Leon can spend a minute
25 with you and go over -- or you can just
26 resubmit everything you wanted me to --
27 because I know you filed some things as

1 we've gone along.

2 MR. MCKNIGHT: Do you have all
3 this? I mean, I'm just going to give you
4 this.

5 THE COMMISSIONER: If you need
6 copies, because we'll make you copies.

7 MR. MCKNIGHT: No-no, I don't need
8 copies. I'm just going to take note of
9 them.

10 THE COMMISSIONER: Oh, absolutely.

11 MR. MCKNIGHT: You could have
12 these.

13 THE COMMISSIONER: You know,
14 actually, Mr. McKnight, Mr. Leon does -- he
15 does a printout for me about what the
16 exhibits are, a listing of the printout. If
17 you want, we can send that to you, or if you
18 wanted to make your own notes, that's fine,
19 too.

20 MR. MCKNIGHT: I'll just make my
21 notes.

22 THE COMMISSIONER: Okay, that's
23 fine. Then that will conclude today's
24 hearing. And, Mr. McKnight, good luck to
25 you.

26 MR. MCKNIGHT: Thank you.

27 THE COMMISSIONER: Thank you for

1 being a gentleman.. Thank you, Ms. Summers.

2 MS. SUMMERS: Thank you,
3 Commissioner.

4 (WHEREUPON, THE RECORD WAS
5 ADJOURNED AT 2:06 p.m.)
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C E R T I F I C A T E

I hereby certify that the foregoing
pages is a complete and accurate
transcription of my original stenographic
notes in the matter of Anthony McKnight v.
State of Connecticut/Department of
Corrections, and GAB Robins North America
held before the Honorable Stephen B.
Delaney, Commissioner, Workers'
Compensation, First District, 999 Asylum
Avenue, Hartford, Connecticut, on May 5,
2010.

Wilfred Leon
Chief Hearing Reporter
First District